Supreme Court, U.S.
FILED
JUN 17 1996
CLERK

No. 95-1662

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, AFL-CIO, ET AL., PETITIONERS

v.

JANET RENO, ATTORNEY GENERAL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether aliens employed as construction workers on the outer Continental Shelf (OCS) must comply with the visa and labor certification requirements of the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, notwithstanding the specific provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, that govern the employment of foreign workers on the OCS.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 73 F.3d 1134. An earlier opinion of the court of appeals (Pet. App. 38a-49a) is reported at 981 F.2d 1269. The opinion of the district court (Pet. App. 24a-37a) is unreported. An earlier opinion of the district court (Pet. App. 50a-62a) is reported at 768 F. Supp. 375.

JURISDICTION

The judgment of the court of appeals was entered on January 16, 1996. The petition for a writ of certiorari was filed on April 15, 1996. Petitioners erroneously invoke this Court's jurisdiction under 28 U.S.C. 1251. The Court's jurisdiction is properly invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, to encourage the discovery and development of oil reserves on the outer Continental Shelf (OCS).[1] Section 1333(a)(1) of the OCSLA provides that "[t]he Constitution and laws * * * of the United States are extended to the subsoil and the seabed" of the OCS, and to "all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed" that are erected for development of natural resources.[2]

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[1] Section 1331(a) (43 U.S.C.) defines the "outer Continental Shelf" to include:

> all submerged lands lying seaward and outside of the area of lands beneath navigable waters * * *, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

[2] As originally enacted, Section 1333(a)(1) extended the laws of the United States only to "all artificial islands and fixed structures" erected for resource development. § 2, 67 Stat. 462 (43 U.S.C. 1333(a)(1) (1976)). In 1978, Congress amended Section 1333(a)(1), deleting the phrase "fixed structures," and inserting the phrase "all installations and other devices permanently or temporarily attached to the seabed." See Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, § 203, 92 Stat. 635.

In 1978, Congress substantially expanded the OCSLA's regulatory provisions. As relevant here, the 1978 amendments imposed specific and detailed restrictions on the employment of foreign workers on the OCS. See 43 U.S.C. 1356(a)(3) and (c). Section 1356 directs the Coast Guard to issue regulations requiring that "any vessel, rig, platform, or other vehicle or structure" used in regulated operations on the OCS be "manned or crewed * * * by citizens of the United States or aliens admitted to the United States for permanent residence." 43 U.S.C. 1356(a)(3).

The labor restrictions imposed by Section 1356(a), known as "manning and crewing" requirements, are subject to three significant statutory exceptions. Crew members need not be United States citizens or lawful permanent residents if (1) "there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work," 43 U.S.C. 1356(c)(1)(B); (2) the President makes a "specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure," that application of the manning and crewing requirements "would not be consistent with the national interest," 43 U.S.C. 1356(c)(1)(C); or (3) citizens of a foreign nation own "over 50 percent" of the vessel, rig, platform, or other vehicle or structure in question, or exercise "the right effectively to control" it, 43 U.S.C. 1356(c)(2).[3]

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[3] Section 1356 also provides an exception to the manning and crewing requirements where those requirements are inconsistent with contractual provisions or "national registry" requirements in effect on September 18, 1978. 43 U.S.C. 1356(c)(1)(A).

Pursuant to Section 1356, the Coast Guard promulgated detailed regulations concerning the employment of personnel on units engaged in OCS activities. See 33 C.F.R. 141.1-141.35 (1995). The regulations provide, *inter alia*, that Section 1356's labor restrictions apply to members of the "regular complement" of regulated vessels, rigs, platforms, or structures. 33 C.F.R. 141.15.[4]

2. In 1989, nonimmigrant aliens employed by a Dutch-owned company performed construction work on two American-owned oil drilling platforms located on the OCS off the coast of California. The aliens, working from a derrick barge owned by the Dutch company, installed the foundations for the platforms. Pet. App. 3a.

Petitioners, two labor unions that represent American construction workers, filed this action against the Attorney General, the Secretary of State, the Secretary of Transportation, the Coast Guard, and the Immigration and Naturalization Service (INS). Petitioners alleged that the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, which they contended was applicable to the OCS pursuant to 43 U.S.C. 1333(a)(1), barred alien employees from installing oil platforms on the OCS without first obtaining the appropriate immigration visas. Pet. App. 3a-4a.

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[4] The regulations define the "regular complement" of a unit engaged in OCS activities as "those personnel necessary for the routine functioning of the unit." The definition excludes "specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations; extra personnel on a unit for training; and other personnel temporarily on a unit for specialized operations." 33 C.F.R. 141.15.

The INA permits a nonimmigrant alien to perform construction work in the United States if he or she possesses an "H-2B" visa. Such visas are available from American consular officers abroad only if the employer petitioning for the alien's admission has obtained "certification from the Secretary of Labor that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers." 8 C.F.R. 214.2(h)(6)(iv)(A)(1); see also 8 U.S.C. 1101(a)(15)(H)(ii)(b). Petitioners challenged the government's position that the alien workers did not require visas because the specific labor provisions of the OCSLA, rather than the general immigration provisions of the INA, govern the OCS activities at issue in this case. Pet. App. 51a.

3. The district court initially granted petitioners' motion for summary judgment and ordered respondents to apply the INA's visa requirements to nonimmigrant aliens engaged in temporary labor on the OCS. Pet. App. 62a, 64a. The court concluded that the INA applies to such workers pursuant to Section 1333(a)(1) of the OCSLA. It further held that nonimmigrant, temporary construction workers of the kind at issue here are not "necessary for the routine functioning" of an oil production facility, and, therefore, are not covered by the manning and crewing provisions of Section 1356. Pet. App. 61a (citing 33 C.F.R. 141.15 (Coast Guard regulations implementing 43 U.S.C. 1356)). Because it concluded that Section 1356 of the OCSLA was inapplicable, the court held that the INA's visa requirements attached. Pet. App. 62a. The court expressly declined to decide "whether the OCSLA repeals application of the INA

to employees who are encompassed by the manning and crewing requirement of [Section] 1356(a)(3)." *Id.* at 62a n.8.

4. The court of appeals vacated the district court's judgment and remanded the case for further proceedings. Pet. App. 38a-49a. It directed the district court to consider on remand whether the alien workers here, even if they were not part of the regular complement of the oil platform they were constructing, were nevertheless part of the regular complement of the foreign-owned derrick barge from which they were conducting their operations (and were therefore within Section 1356's exception for workers on foreign-owned vessels, see 43 U.S.C. 1356(c)(2)). The court observed that, if the alien workers were covered by Section 1356, there would be no need for it to decide whether the INA applies to oil rig construction on the OCS generally. Rather, the case would turn on the "far narrower" question "whether aliens manning or crewing foreign-owned facilities, and thus within the [Section] 1356(c)(2) exception, [are] exempted from the immigration laws even if these laws otherwise appl[y]." Pet. App. 46a.

5. On remand, the district court granted summary judgment for the government. Pet. App. 24a-37a. The court held that the alien workers were part of the regular complement of the derrick barge, and that they were therefore covered by the exception to the OCSLA's manning and crewing requirements for workers on foreign-owned vessels, 43 U.S.C. 1356(c)(2). Pet. App. 29a-33a. The court observed that, under the Coast Guard's "continuous and long-standing interpretation" (*id.* at 31a) of its own regulations, construction workers aboard vessels principally involved in the construction of off-shore plat-

forms are engaged in the business of the vessel and, therefore, are covered by Section 1356 as part of the regular complement of that vessel. Pet App. 27a-28a. Finding that interpretation to be neither "plainly erroneous," nor "inconsistent with the regulation" (*id.* at 32a, quoting *Stinson* v. *United States*, 508 U.S. 36, 45 (1993)), the court upheld the Coast Guard's regulatory interpretation.

The court further held that the visa requirements of the INA do not apply to workers who are covered by the exceptions to the manning and crewing requirements contained in Section 1356 of the OCSLA, 43 U.S.C. 1356(a)(3) and (c). Pet. App. 34a-37a. Specifically, the court reasoned that although federal laws cover certain off-shore activities pursuant to Section 1333(a)(1) of the OCSLA, Section 1356 of the OCSLA recognizes "a discrete, narrowly tailored exception" to that coverage. Pet. App. 35a-36a.

6. The court of appeals affirmed. Pet. App. 1a-23a. On appeal, petitioners did not dispute the Coast Guard's position that the nonimmigrant workers at issue were manning and crewing the derrick barge and, thus, fell within the foreign-owned vessel exception in Section 1356(c)(2). Petitioners contended, however, that Section 1356(c)(2) exempted those workers only from Section 1356's manning and crewing requirements and not from the provisions of the INA. Pet. App. 7a. The court rejected that contention.

The court of appeals first observed that, before 1978, the INA did not apply to workers on derrick barges or oil platforms on the OCS because those units were not considered to be "fixed structures" under the former Section 1333(a)(1). Pet. App. 7a; note 2, *infra*. The 1978 amendments to the OCSLA

both extended federal law to "installations and other devices permanently or temporarily attached to the seabed," 43 U.S.C. 1333(a)(1), and created the manning and crewing requirement and the exceptions thereto, 43 U.S.C. 1356(a)(3) and (c). Pet. App. 8a-9a. The court further observed that, shortly after enactment of the 1978 amendments to the OCSLA that added Section 1356, the Department of Justice interpreted that provision as "a self-contained statement of the extent to which principles of immigration control are to be applied" to the OCS. Pet. App. 9a (quoting 3 Op. Off. Legal Counsel 362, 366 (1979)).

The court concluded that "[t]his contemporaneous interpretation [of the OCSLA] by the agency of government responsible for administering the immigration laws deserves considerable respect, not only because of the [agency's] responsibilities and expertise, but also because the reasons supporting [the agency's] conclusion are compelling." Pet. App. 9a. The court explained that Section 1356 and its exceptions would be "drained of meaning" (*id.* at 10a) if the INA's visa requirements were made applicable to workers covered by Section 1356. Pet. App. 12a-13a. The court noted, for example, that Section 1356(c)(1)(A)—which allows employers to use non-immigrant aliens on the OCS pursuant to contracts in effect before September 1978—would be "rendered essentially worthless" if the INA operated independently to bar such employment. Pet. App. 10a. Concluding that Section 1356 "should be read so that all of it has effect" (Pet. App. 12a), the court held that the INA is inapplicable to workers manning or crewing foreign-owned derrick barges that qualify for the

exemption contained in Section 1356(c)(2). Pet. App. 13a.[5]

Chief Judge Edwards dissented. Pet. App. 14a-23a. He would not have deferred to the Coast Guard's regulatory determination that the alien workers were manning or crewing the foreign-owned vessel (*id.* at 15a), and he disagreed with the majority's holding that Section 1356(c)(2) of the OCSLA exempts covered workers from the provisions of the INA. *Ibid.* In Judge Edwards' view, "the plain language of section 1356(c) indicates that its exceptions were intended only as exemptions to the strict manning and crewing regulations issued under subsection (a), and *not* to the general application of the INA." Pet. App. 17a.

ARGUMENT

1. Petitioners contend (Pet. 13-15) that the "plain language" of Sections 1333(a)(1) and 1356 of the OCSLA compels the application of the INA's visa and labor certification requirements to aliens seeking to work on the OCS. As the court of appeals observed (Pet. App. 10a-12a), however, the interpretation urged by petitioners would render largely superfluous Section 1356's manning and crewing requirement, and

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[5] In the court of appeals, the government argued that the decision in *Piledrivers' Local Union No. 2375* v. *Smith*, 695 F.2d 390 (9th Cir. 1982)—in which the court found the INA to be inapplicable to alien workers manning or crewing a foreign-owned vessel—collaterally estopped petitioners from pursuing the instant suit. The court of appeals here declined to reach the preclusion question, stating that "[b]ecause our decision on the merits is the same as that in *Piledrivers'*, we do not express any view on the preclusive effect of the Ninth Circuit's ruling.". Pet. App. 13a.

the statutory exceptions to that requirement, contrary to the rule that courts should "avoid a [statutory] reading which renders some words altogether redundant." *Gustafson* v. *Alloyd Co.*, 115 S. Ct. 1061, 1069 (1995); see also *Bailey* v. *United States*, 116 S. Ct. 501, 507 (1995) (citing *Platt* v. *Union Pacific R.R.*, 99 U.S. 48, 58-59 (1879)); *Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2413 (1995).

Petitioners identify a number of "practical results" that they contend would obtain if their interpretation of the OCSLA were accepted. Pet. 15. They argue that, in light of those results, Section 1356 has meaning and effect independent of the INA. As this Court has instructed, however, "[i]n construing a statute [courts] are obliged to give effect, if possible, to *every word* Congress used." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979) (emphasis added). See also *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955); 2A N. Singer, *Sutherland Statutory Construction* § 46.06, at 119 (rev. 5th ed. 1992). The fact that *some* provisions of Section 1356 could be given effect under petitioners' interpretation does not justify adopting that interpretation when other provisions would be rendered nugatory. See Pet. App. 12a ("To say that [Section] 1356 would have some residual effect in one limited area, is to admit that the statute is being stripped of any effect everywhere else.").

Petitioners note, for example, that Section 1356's manning and crewing requirements—but not the INA—apply to free-floating vessels used for developing the resources of the OCS. Pet. 16; see also Pet.

App. 18a.[6] The fact remains, however, that under petitioner's construction of the OCSLA, Section 1356's exemption provisions would be rendered virtually meaningless with respect to the "rig[s], platform[s], [and] other structure[s]" to which it applies.

Petitioners also observe that, under their reading of the OCSLA, Section 1356 would have continued impact—independent of the INA—with respect to employment on the OCS of foreigners in visa categories other than H-2B (*i.e.*, visa categories unrelated to the availability of American workers to perform the jobs in question). Pet. 17; see also Pet. App. 19a. As a practical matter, the principal remaining visa categories are "H-1" visas (available to nonimmigrants in certain "specialty occupations" requiring at least a bachelor's degree) and "L-1" visas (for nonimmigrants working "in a capacity that is managerial, executive, or involves specialized knowledge" and who are temporarily transferred by their employers to the United States). See 8 U.S.C. 1101(a)(15)(H)(i)(b) and (L); see also Pet. App. 19a n.1. It is exceedingly unlikely that Congress, through Section 1356, intended to establish an entirely separate statutory and bureaucratic framework[7] to address employment

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[6] Section 1333(a)(1) extends federal law only to the seabed and to artificial islands and installations or devices permanently or temporarily attached to the seabed. Section 1356, by contrast, applies to "any vessel, rig, platform, or other vehicle or structure" used for resource development on the OCS.

[7] The OCSLA's manning and crewing requirements are administered and enforced by the Coast Guard. See 33 C.F.R. Pt. 141. The INA's visa requirements are administered by the Department of State, see 22 C.F.R. Subch. E, and the Immigration and Naturalization Service, see, *e.g.*, 8 C.F.R. Pts. 212, 235. In addition, the labor certification required as a prerequisite of

on the OCS of the narrow category of aliens who have college degrees or are transferred temporarily by their employers to perform managerial, executive, or specialized jobs. The fact that Section 1356 would continue to have an independent impact on these marginal categories of employment on the OCS thus does not justify petitioners' reading of the Act.

Nor did the court of appeals depart from the "plain meaning" of Section 1333(a)(2) in construing the OCSLA's provisions as a whole. This Court has frequently emphasized that the search for a statute's plain meaning is not a compartmentalized inquiry, but rather is one that requires consideration of all of the statute's individual provisions. See, *e.g.*, *Beecham* v. *United States*, 114 S. Ct. 1669, 1671 (1994) ("[t]he plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences"); *John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Sav. Bank*, 114 S. Ct. 517, 523 (1993) ("we examine first the language of the governing statute, guided not by a single sentence or member of a sentence, but looking to the provisions of the whole law, and to its object and policy") (internal quotations and brackets omitted).

In light of the foregoing, the court of appeals correctly construed the OCSLA in consonance with the longstanding interpretation of the Department of Justice, "the agency of government responsible for administering the immigration laws." Pet. App. 9a. The Justice Department's contemporaneous interpretation of Section 1356 as "a self-contained statement of the extent to which principles of immigration

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an "H-2B" visa must be obtained from the Secretary of Labor. See 22 C.F.R. 40.51.

control are to be applied" to the OCS (Pet. App. 9a, quoting 3 Op. Off. Legal Counsel 362, 366 (1979)), is not only "reasonable," *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council Inc.*, 467 U.S. 837, 844 (1984), but the best construction of the OCSLA's provisions, taken as a whole. As the court of appeals recognized (Pet. App. 11a), that interpretation best preserves the OCSLA's dual goals of protecting jobs for American workers on the OCS while preventing retaliation against American workers in foreign offshore activities.

2. Contrary to petitioners' contention (Pet. 13), the court of appeals did not hold that the 1978 amendments to the OCSLA "*sub silentio* repealed entirely the application of United States immigration laws to the OCS." Rather, consistent with the canon of construction that specific statutory provisions govern more general ones, *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992), the court held that the specific restrictions and exceptions contained in Section 1356 control the general application of federal law to the OCS contained in Section 1333(a)(1). Pet. App. 13a. As the court of appeals noted, "[Section] 1333(a)(1) is written in general terms" and "does not expressly refer to nonimmigrant workers or to the immigration laws," whereas "[Section] 1356 lays out a detailed system governing who may work on vessels and structures conducting regulated activities on the outer Continental Shelf, a system drawing distinctions between citizens and resident aliens." Pet. App. 13a. In this circumstance, and in the absence of a clear indication of congressional intent to the contrary, the court of appeals correctly followed this Court's instruction that "a specific statute will not be controlled or nullified by a general one, regardless of

the priority of enactment," *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987).[8] Pet. App. 13a.

3. Petitioners contend that, unless the INA's visa requirements are applied to aliens seeking employment on the outer Continental Shelf, the OCS will be vulnerable to incursion by "known criminals, terrorists, saboteurs, spies, and drug abusers." Pet. 2; see also Pet. 10-11, 18; Pet. App. 20a.[9] That contention misconceives the INA visa process.

In the context of applications for *nonimmigrant* visas, the INA does not require (as it does for immigrant visas) the submission of a police certificate indicating the contents of an alien's police records, if any, in his or her country of origin. Compare 8 U.S.C. 1202(c)-(d) and 22 C.F.R. 41.105(a)(4) (nonimmigrant visas) with 8 U.S.C. 1202(b) and 22 C.F.R. 42.65(b) (immigrant visas). Similarly, nonimmigrant visas are generally issued without a medical examination of the applicant. Compare 8 U.S.C. 1202(c) and 22 C.F.R. 41.108 (nonimmigrant visas) with 8 U.S.C.

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[8] Petitioners assert that the court of appeals necessarily employed the doctrine of implied repeal because "*some* devices attached to the seabed were clearly covered" by the INA through Section 1333(a)(1) as it was originally enacted in 1953. Pet. 3 & n.1, 22. But the order of enactment does not alter the principle of statutory construction that the specific controls the general. See *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, *supra*. And, in any event, the derrick barge at issue in this case is within the scope of Section 1333(a)(1) only as a result of the 1978 amendments that also added Section 1356 to OCSLA.

[9] We note that these hypothetical dangers would necessarily be confined to the OCS itself, because aliens working there must obtain visas if they travel from an offshore facility to the United States. See 8 U.S.C. 1101(a)(15)(B), 1181(a), 1201(a); 8 C.F.R. 214.1(a)(1)(i) and (a)(3).

1201(d) and 22 C.F.R. 42.66 (requiring medical examination of all aliens seeking immigrant visas). Thus, while application of the INA's visa requirements to aliens seeking to work on the OCS would provide some additional protection against the dangers petitioners posit, the visa scheme is not designed to provide the comprehensive protection that petitioners suggest. As a practical matter, such protection more realistically depends on enforcement of federal and state criminal laws, both of which are made applicable to the outer Continental Shelf by the OCSLA, see 43 U.S.C. 1333(a)(1) and (2)(A).

4. The practical difficulty that imposing the INA's visa requirements on the OCS would present strongly supports the conclusion that Congress did not intend such an arrangement. Currently, some alien workers proceed directly to the OCS without passing through the United States. See Pet. 6 (citing Answers and Objections to Plaintiffs' First Set of Interrogatories to Defendants Janet Reno and Immigration and Naturalization Service at 6). Application of the visa scheme to those workers would compel the INS either to prohibit that practice and require all such workers to present themselves for inspection at designated "ports of entry" within the United States, see 8 C.F.R. 235.1(a), 100.4(c)(2) and (3), or to establish inspection facilities on every structure on the OCS at which aliens might work. In addition, such a policy would require the INS to enforce the employment restrictions under the INA through visits to offshore facilities and, where necessary, initiation of proceedings to impose sanctions (including criminal penalties on employers in some circumstances). See 8 U.S.C. 1324a; 8 C.F.R. Pt. 274a. Such efforts would occur in addition to continued enforcement by the Coast Guard

of the OCSLA's manning and crewing requirements. See 33 C.F.R. 140.101-140.105 (Coast Guard inspections); 33 C.F.R. 141.25, 141.30 (worker documentation requirements); 33 C.F.R. 140.35 (sanction provisions). It is highly unlikely that Congress intended the creation of such a dual enforcement system, yet took no action in the more than four decades since the OCSLA's enactment to alter the Executive Branch's interpretation of the geographical limits of its obligations to enforce the visa scheme.

5. Finally, in the only other appellate decision concerning the confluence of Sections 1333(a)(1) and 1356 of the OCSLA, the court concluded that the INA is applicable to the outer Continental Shelf through Section 1333(a)(1), but that it is subject to the exceptions set out in Section 1356(c). *Piledrivers' Local Union No. 2375* v. *Smith*, 695 F.2d 390 (9th Cir., 1982). Although the court in *Piledrivers'* relied on a somewhat different legal theory than did the court below, both courts concluded that nonimmigrant workers who fall within the exceptions to Section 1356's manning and crewing requirements are not subject to the visa requirements of the INA. See Pet. App. 13a n.5 ("[O]ur decision on the merits is the same as that in *Piledrivers'*.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1996